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Correspondence

RESTRICTIVE LEGISLATION

Editor, THE JOURNAL OF ACCOUNTANCY:

SIR: In the May issue of the JOURNAL, I find a letter from Maurice E. Peloubet commenting on my letter in your March issue dealing with restrictive legislation. I also find, in your editorial, excerpts on the same subject from Guy V. W. Lyman of New Orleans.

Mr. Lyman thinks that in my letter I missed one of the most important reasons for restrictive legislation—the benefit to the public. Probably I should have mentioned this. However, as it is so well known that the public interest is the fundamental reason for all C. P. A. legislation, I took it for granted, and tried to deal with the legal aspect of the case as it appeared to me. Let me say in passing, however, that when we speak of the public interest, we are talking of the public interest of a particular sovereign state, and not the public interest of the United States in general. This will readily be seen by calling attention to the fact that each state has a C. P. A. law to protect its own public interest.

Mr. Peloubet and I are in perfect accord as to the desirability of having a free interstate accountancy practice both for the large and small practitioner. If conducted on fair lines, it would be a splendid accomplishment for business in general. But let us remember that we can not claim this as a right, because the state has something to say about it. I think that if this subject is handled tactfully and in a fair spirit, concessions can be obtained from the states, but a concession is not a right. We pray for concessions, but we demand rights. In most discussions on this subject, the attitude is taken by the plaintiff accountant that he is sorely abused and that because he is a citizen of the United States therefore he is, *ipso facto*, entitled to the right of way in any state in which he might find business, and that the particular state in question is quite out of order in passing local regulations that might adversely affect him. I do not think that anything can be accomplished by such an attitude. We must proceed by first recognizing the states' rights in the matter. With this as a basis, we may then show wherein changes in the law might be more desirable to all and concessions requested.

Two quotations from Mr. Peloubet's letter will indicate the extent of our divergence.

First—Mr. Peloubet states that "a Pennsylvanian with business in four states is at liberty to employ four different local accountants or to have all the work done by his Pennsylvania accountant, whichever he prefers." If we accept this premise as true, then Mr. Peloubet's conclusions logically follow. But on analysis these premises are not true. I concede that his statement is the desideratum sought by some large accounting firms, yet it is not a fact that a man in organized society is "at liberty to do whichever he prefers," no matter how righteous his act might be in his own eyes, because we are governed by law which is after all the majority opinion in its crystallized form.

If the Pennsylvanian business man referred to is a majority stockholder in a Pennsylvania corporation, and that corporation becomes established in another state as a foreign corporation, this foreign corporation becomes immediately

bound to observe the laws of the latter state as to manner of organization, licence fees, appointment of a resident agent, etc.

Everyone will concede that the Pennsylvania business man must see to it that his corporation observe such law. Now, if the state requires outside accountants to register before practising therein, or places some other reasonable restriction on their practice in furtherance of its police power and in the exercise of its state sovereignty, it can hardly then be said that the Pennsylvanian business man can do "whichever he prefers" and have his work done by his Pennsylvanian accountant who fails to observe the state law. The business man might be desirous of having his work done by the Pennsylvanian accountant and might engage him for such purpose, but he can not have his work done by him for the good and sufficient reason that the state will not permit its laws to be violated.

Second—I again quote from Mr. Peloubet—"Whether or not restrictive legislation in its most extreme form of geographical limitation is legally possible is not the important issue. The thing we must consider is whether that type of restrictive legislation benefits the public."

In his first sentence Mr. Peloubet brushes aside the legal issue as quite unimportant. To my mind it is the all-important issue. In fact it is because of the restrictive legislation adopted by some states that all these polemics have arisen. Of what avail is it to me that I try to be possessed of something of value if the law bids me nay? I think on sober reflection the legal issue must be considered as all-important.

The benefit to the public is of course the underlying reason for this kind of legislation. Yet Mr. Peloubet's "public" covers too much territory. He would take in the whole United States, while mine covers the state only. Let us remember that a state law has no extraterritorial effect and was never so intended. Restrictive legislation is purely a state matter, and I see nothing in the constitution of the United States to give congress similar power over the entire people of the nation considered as an entity.

In the first paragraph of his letter Mr. Peloubet writes that I stated quite plainly in my March letter that the proponents of restrictive legislation have one single object in view—their own personal or group protection; and that I made no reference to the usual perfunctory claim of protecting the interests of clients and the public.

In defense, let me admit his second allegation regarding the "benefit to the public." I failed to mention it because I thought I might be permitted to take it for granted, on account of its obviousness and its triteness. I do not consider it perfunctory, however. On the contrary it is the corner-stone of this kind of legislation, but as stated elsewhere by me, the word "public" herein used refers to the general public of a state and has no reference whatever to the larger public of the nation. If it were otherwise we might as well abolish all the state legislatures and laws and have all our domestic affairs administered from Washington, D. C.

I also admit that C. P. A. laws (restrictive or otherwise) do give protection to accountants. Candor constrains me so to state, but we all know that this is not the purpose and intent of the law. It is a corollary. And why not? He profits most "who serveth best." The fruits of this protection are enjoyed in each state by its local C. P. A.'s. This makes for equality. This equality

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can still be maintained in interstate practice by means of reciprocity. Yet it is an open secret that many accounting firms seek to obtain the fruits of reciprocity in other states while their state boards meticulously guard against the granting of similar privileges to the accountants of foreign states. It is this disposition to be unfair that causes all the trouble, and where is the practising C. P. A. who is ignorant of this fact? Let us face the issue squarely because "truth crushed to earth shall rise again."

In closing let me ask all accountants, but particularly the Scottish, what they think of this hypothetical case: Suppose a Californian were visiting in Oregon during the summer season when it is hot in the former state—and suppose that during his visit here he met an Oregonian who recognized in him a kindred spirit, and who wined and dined him and showered upon him all the civil amenities possible to be bestowed including the sanctity of his home to the end that he might have a pleasant and enjoyable time.

Suppose further that during the spring season of the following year the Oregonian drove to the sunny south and among other things called upon his acquaintance who was at first loath to receive him, but later relented and out of the goodness of his heart took him under his patronage by giving him quarters with his Jap servants with whom he dined and drove around.

I suppose that one could not correctly state that this was not reciprocity, but I do know that this is not the sort of reciprocity that the Scots are seeking. The hypothetical case might not be exactly in point, but there are kernels of truth in it, and analogous conduct is not unknown in some attempts at interstate practice.

"Give and take" is a cardinal principle to be observed if one desires to live in peace and harmony with his fellow-man, but when one seeks to perpetuate the habit of taking, and insists that the other cultivate the habit of giving, there is sooner or later bound to be friction, and the smoke screen of the "public interest"—whether pro or con—will prove no palladium against the results of such conduct.

ARTHUR BERRIDGE.

Portland, Oregon, May 6, 1931.